

Procedure – Public Interest Disclosures

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1 PURPOSE AND SCOPE

The Pyrenees Shire Council supports Victoria’s integrity framework and encourages people to report improper conduct in the public sector. Council supports and takes action to investigate and address that conduct.

We expect the highest standards of integrity on the part of our Councillors and officers and do not tolerate improper conduct by its officers nor the taking of reprisals against those who come forward to disclose such conduct. We will facilitate reports about improper conduct and cooperate with lawful investigations. We will also take appropriate steps to protect people from reprisals.

This procedure explains the steps we take to:

- Facilitate disclosures about Council, its Councillors or officers under the *Public Interest Disclosures Act 2012* (Vic) (the PID Act), and
- Handle disclosures and notify the Independent Broad-based Anti-corruption commission (the IBAC).

It also sets out our procedures for protecting people from detrimental action taken in reprisal for such disclosures.

2 THE PUBLIC INTEREST DISCLOSURES ACT 2012

The *Public Interest Disclosures Act 2012* (the PID Act) ensures that people who report improper conduct and corruption in the Victorian public sector (whistleblowers) can do so in the knowledge that they will be protected.

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Protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

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3 REPORTING - MAKING A PUBLIC INTEREST DISCLOSURE

3.1 What Is A Public Interest Disclosure?

A Public Interest Disclosure is a report about:

- ‘[improper conduct](#)’ by a public officer or body (or person trying to influence a public officer or body)
- ‘[detrimental action](#)’ taken, or threatened to be taken, by a public officer or body against a person in reprisal for a public interest disclosure

Examples of improper conduct could include the serious corrupt conduct of a public officer or public body that constitutes an indictable offence (punishable by imprisonment for five years or more). It can also include dishonest conduct, such as misusing a corporate credit card, or conduct that is a substantial risk to public health or safety, such as ignoring safety problems with public infrastructure.

A disclosure can relate to conduct or action that has already taken place, may be occurring now, or may happen in the future.

Detrimental action is action taken against a person for making a public interest disclosure or cooperating with an investigation into one. It includes intimidation, harassment, and adverse treatment in relations to a person’s employment. Detrimental action is, or threatened to be, taken against a person because that person or another person has made, or intends to make a disclosure or has cooperated, or intends to cooperate, with the investigation of one.

3.2 Who can make a public interest disclosure?

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body. However, to fall within the scheme,

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disclosures must be made to an organisation that is authorised to receive disclosures. A list of organisations authorised to receive disclosures is provided as Appendix A.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure – but its officers or employees can.

3.3 Who a public interest disclosure can be about

Disclosures can be made about:

- Public bodies
- Public officers
- Conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer or is intended to adversely affect their performance.

3.4 What Public Interest Disclosures can Council receive?

Council can receive public interest disclosures regarding its Council officers or employees. Council cannot receive disclosures about its Councillors or other public bodies.

3.5 How to make a public interest disclosure

A public interest disclosure can be made in a variety of ways:

Private verbal disclosure	<p>Disclosures can be made in person, by phone or by leaving a voice mail message to:</p> <ul style="list-style-type: none"> • Public Interests Disclosure Coordinator (Director Corporate & Community Services) 03 5349 1105 • Public Interests Disclosure Officer (Manager Governance Risk & Compliance) 03 5349 1110 <p>Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:</p> <ul style="list-style-type: none"> • A lawyer representing the person making the disclosure (if any) • One or more people to whom a disclosure can be made under the PID Act or PID Regulations <p>This does not preclude a group of individuals from making a joint disclosure.</p> <p>If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation but should give warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.</p>
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Written disclosure	<p>A written disclosure can be provided to the relevant organisation by:</p> <ul style="list-style-type: none"> • Delivering it in person to the Council offices, 5 Lawrence Street, Beaufort • Mailing it to: <ul style="list-style-type: none"> Director Corporate & Community Services (Public Interest Disclosures Coordinator) Pyrenees Shire Council 5 Lawrence Street BEAUFORT VIC 3373 • Emailing it to pyrenees@pyrenees.vic.gov.au or kathy.bramwell@pyrenees.vic.gov.au • Completing the online form available on the IBAC and the Victorian Ombudsman websites <p>A disclosure cannot be made by fax.</p>
Anonymous disclosure	<p>A person doesn't need to identify themselves to make a disclosure.</p> <p>An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the PID Regulations.</p> <p>If the disclosure comes from an email address where the identify of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.</p>

Some key points for making a public interest disclosure are:

- A person or a group of people can make a public interest disclosure. A company or business cannot make a public interest disclosure.
- If you ask someone else to make a disclosure on your behalf, that person, and not you, will be entitled to the protections in Part 6 of the PID Act for making the disclosure.
- You do not need to refer to the PID Act for it to be treated as a public interest disclosure.
- You do not need to be able to identify the person to which the public interest disclosure relates.

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- You can say you do not want the disclosure to be treated as a public interest disclosure, but you must do this in writing within 28 days of the disclosure.
- If you make an anonymous disclosure and provide us with no means of contacting you, then we may find it difficult to determine whether your complaint fits the definition of a disclosure and we will not be required to communicate with you about your disclosure.

Public Interests Disclosures may also be made directly to the Victorian Ombudsman or the IBAC. Disclosures relating to Councillors must be made directly to the Ombudsman or the IBAC.

Victorian Ombudsman	Office of the Ombudsman, Level 2, 570 Bourke Street, Melbourne Vic 3000 (03) 9613 6222 or 1800 806 314 Email: complaints@ombudsman.vic.gov.au Online: complaint form
IBAC	Mail: GPO Box 24234, Melbourne VIC 3001 1300 735 135 Email: info@ibac.vic.gov.au Online: complaint process

When making a disclosure it is helpful to provide:

- A description of the alleged improper conduct or detrimental action
- Who was involved, and where and when the conduct occurred, is occurring, or may occur
- Your grounds for believing the conduct occurred, is occurring, or may occur
- Any supporting documentation

3.6 Assistance in making a disclosure

Guidance on how to raise concerns or make a public interest disclosure can be sought from the Public Interest Disclosure Coordinator or Officer.

4 PROCEDURE - HANDLING PUBLIC INTEREST DISCLOSURES

4.1 Receiving a public interest disclosure

When a complaint, report or allegation of improper conduct or detrimental action is received by the Pyrenees Shire Council, it must immediately be provided to the Public Interests Disclosures Coordinator (Director Corporate & Community Services):

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Receipt by telephone	<p>If a person advises by telephone that they would like to make a public interest disclosure, immediately transfer the call to the Public Interests Disclosures Coordinator or Officer.</p> <p>If a person asks to speak to the Public Interests Disclosures Coordinator or Officer, please transfer as above.</p> <p>No further questions should be asked, including seeking identification.</p> <p>If the officers are unavailable, do not put a message on the customer action request system – rather just ask the individual to leave a message on the coordinator’s telephone message system.</p>
Receipt via email	<p>Emails received that refer to making a public interest disclosure must be referred electronically to the Public Interest Disclosures Coordinator.</p> <p>If received by Records staff, a confidential file should be opened in the electronic document management system (EDMS) with executive access security only.</p> <p>If received directly by the Coordinator or Officer, arrangements will be made to open a confidential file.</p>
Receipt via mail	<p>Letters received that refer to making a public interest disclosure, or that are addressed to the Public Interest Disclosures Coordinator, must immediately be personally provided to the Public Interest Disclosures Coordinator without opening.</p>

Once received and referred to the Public Interest Disclosures Coordinator, no comment or disclosure must be made to any other person regarding the receipt of a potential disclosure, unless in accordance with this procedure or law.

4.1.1 Can a discloser ask that a complaint not be dealt with as a public interest disclosure?

Yes. A discloser can advise that they do not want the disclosure treated as a public interest disclosure by stating so in writing at the time of making the disclosure or within 28 days of making the disclosure.

In this case, Council will deal with the complaint, report or allegation in accordance with the Pyrenees Shire Council’s normal complaints processes.

4.2 Assessing a public interest disclosure

When a complaint, report or allegation of improper conduct or detrimental action is received by the Public Interest Disclosures Coordinator, the following steps should be

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followed to determine whether the disclosure is a public interest disclosure, is correctly directed, and whether it relates to improper conduct or detrimental action.

<p>Is Council authorised to receive the disclosure?</p>	<p>Pyrenees Shire Council is only authorised to receive public interest disclosures about the Pyrenees Shire Council and/or its employees / officers. A disclosure can be accepted if the discloser doesn't know who the individual concerned is.</p>
	<p>Council is not authorised to receive disclosures about its Councillors. These must be referred directly to IBAC.</p> <p>If a disclosure is not about Council or its officers, but the discloser honestly believes that you are the right organisation to disclose to, then continue to assess the disclosure to decide if it is a potential public interest disclosure. If the disclosure is not about Council or its officers, and the discloser knows you are not the right organisation to disclose to, consult Appendix A and advise the discloser what organisations can receive the disclosure.</p>
<p>Is the disclosure made by a person or group of people?</p>	<p>A business cannot make a disclosure but its officers or employees can. If made by a business, advise how a disclosure can be made.</p>
<p>Assess the disclosure in accordance with section 4.2.1.</p>	<p>If the disclosure is about improper conduct or detrimental action, follow the instructions in section 4.3(a).</p> <p>If the disclosure is not about improper conduct or detrimental action the disclosure is not a public interest disclosure. Advise the discloser, in writing within 28 days, in accordance with section 4.3(b).</p>

4.2.1 Assessment considerations – standards that need to be applied

<p>Does the information provided show, or tend to show, there is improper conduct?</p>	<p>To identify whether serious professional misconduct has occurred, the following should be considered:</p> <ul style="list-style-type: none"> • has the person behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office? • Did the behaviour meet the definitions of improper conduct? • was the behaviour conducted in their capacity as a public officer? • Was the misconduct serious?
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<p>Consider the following factors in assessing whether the misconduct is serious:</p>	<ul style="list-style-type: none"> • Persistent, repeated or premeditated behaviour. • Risks posed to others or the consequences of the behaviour. • The level of public trust and responsibility attached to the public office. • The amount of money or potential benefit / loss involved in the wrongdoing. • How the conduct would be perceived by the person’s peers. • Whether the conduct would result in significant disciplinary or potentially criminal penalties. • The size of the discrepancy between what the person should have done and what they did. • Whether it should have been apparent to the person that they were wrong.
<p>Does the information provided show, or tend to show, there is detrimental action?</p>	<p>It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.</p> <p>The person need not have taken the detrimental action but can just have threatened to do so or incited someone else to do so.</p> <p>The Act does not prevent a manager taking lawful management action against a person who has made a disclosure, provided that the making of the disclosure is not the reasons for the management action being taken.</p> <p>When assessing a disclosure for detrimental action, the following will be considered as part of the assessment:</p> <ul style="list-style-type: none"> • Both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure. • Did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief that): <ul style="list-style-type: none"> ○ The other person (or anyone else) has made, or intends to make, a disclosure, ○ The other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

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<p>How reliable is the information?</p>	<p>In assessing if there is improper conduct or detrimental action, assess the reliability of the information:</p> <ul style="list-style-type: none"> • What is the discloser’s connection to the alleged conduct? Are they a victim, a witness or a participant? • How did they come to know about the conduct? Were they directly involved, did they observe it happening to another person, or did someone tell them about it? • How detailed in the information provided? Is there enough information to enable you to consider where there is improper conduct or detrimental action? • How reliable is the information? Is it supported by other information or evidence?
<p>Does the disclosure believe on reasonable grounds that improper conduct or detrimental action has occurred?</p>	<p>Assess whether the discloser has reasonable grounds to suspect improper conduct or detrimental action has occurred or is going to occur:</p> <ul style="list-style-type: none"> • Reasonable belief requires more than a suspicion. The belief must have supporting facts and circumstances. The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct or detrimental action has occurred. • How reliable is the information provided by the discloser – even if second or third hand? • Consider the credibility of the discloser or the people who provided the discloser with information.

4.3 Notifying the outcome of an assessment

Once the Public Interest Disclosures Coordinator has made an assessment as to whether the complaint, report or allegation is a public interest disclosure or not, the following notifications will be made:

a) Assessment that it is a public interest disclosure

If the assessment outcome is that the complaint, report or allegation is a public interest disclosure, the Public Interest Disclosures Coordinator will:

- **Notify the appropriate agency (IBAC)** in writing, within 28 calendar days after the disclosure was made, that the:
 - Disclosure may be a public interest disclosure, and
 - The disclosure is being sent for assessment.

Provide IBAC with any information obtained during inquiries regarding the disclosure.

- **Notify the discloser** in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.

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b) Assessment that it is not a public interest disclosure

If the assessment outcome is that complaint, report or allegation is not a public interest disclosure, the Public Interest Disclosures Coordinator will advise the discloser in writing, within 28 days after the disclosure was made, that:

- The assessment does not consider the disclosure shows or tends to show improper conduct or detrimental action,
- The disclosure has not been sent to IBAC for assessment,
- The discloser’s identity does not have to be kept confidential, but protections under Part 6 of the Act apply, for example:
 - They cannot be fired, disciplined or bullied for making the disclosure, and
 - They are protected from legal actions such as defamation and civil liability.

Council officers will consider whether the disclosure could be dealt with according to the Pyrenees Shire Council’s normal complaint handling processes.

4.4 If urgent action is required while a disclosure is being assessed

In some circumstances the disclosure may be about conduct that poses an immediate threat to the health and safety of individuals, the preservation of property, or may consist of serious criminal conduct.

In these cases, the Pyrenees Shire Council will take immediate action while considering whether it is a disclosure that must be notified to IBAC. Council may also take immediate action while awaiting IBAC’s decision on a notified matter.

It may be necessary to report criminal conduct to Victoria Policy for investigation or take management action against an employee to prevent future conduct.

While the Act limits the release of information about disclosures, it allows Council officers to disclose the content of the disclosure to the extent necessary to take lawful action in relation to conduct that is the subject of a disclosure, including disciplinary processes or action. However, this does not allow the identity of the discloser to be revealed.

There is an exception that allows both disclosure content and the discloser’s identity to be shared with Victoria Policy where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant in an investigation by Victoria Policy of criminal conduct.

4.5 Mandatory notification to IBAC

By law, Council must notify IBAC of:

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- Potential [public interest disclosures](#)
- Suspected [corrupt conduct](#)
- Suspected or actual [detrimental action](#) taken in response to making a public interest disclosure

5 IBAC ASSESSMENT PROCESS

Once a notification is made to IBAC, they must assess whether the assessable disclosure is a public interest complaint. If IBAC is of the view that the assessable disclosure is a public interest complaint, then the discloser is protected.

In making its assessment, IBAC may seek additional information from the notifying entity or from the discloser if IBAC considers there is insufficient information to decide.

If IBAC determines that a disclosure is a public interest complaint, it will investigate or refer a disclosure, or it may take no further action.

More information on the IBAC assessment process is provided in Appendix B.

6 CONFIDENTIALITY

Council will take all reasonable steps to protect the identify of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act requires any person who receives information due to the handling or investigation of a public interest disclosure not to disclose the information except in limited circumstances or as authorised by law.

There are two main restrictions on disclosing information. Breaching either of these restrictions is an offence.

- a) **Content of a public interest disclosure must be confidential**
The Act prohibits the disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure.
The restriction applies to a person or body that receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating it.
The restriction does not apply to the discloser.
- b) **Identity of a person making a public interest disclosure must be confidential**
The Act prohibits the disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure.
This restriction applies to any person or body, other than the disclosure.

There are exceptions where the confidentiality requirements do not apply:

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- When Council or IBAC is exercising its functions under the Act.
- When it is disclosed by an investigating entity for the purpose of the exercise of functions under the Act that authorises them to investigate a public interest complaint.
- IBAC determines the disclosure is not a public interest complaint.
- When a disclosure is to Victoria Police where an investigating entity has previously disclosed information to the Chief commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct.
- It is for the purpose of a proceeding or for a disciplinary process under a relevant Act.
- The disclosure is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18 years of age), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairment).
- The disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program.
- The disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

Confidentiality also doesn't apply if:

- The disclosure is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint,
- The disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure,
- The disclosure is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint,
- The disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure,
- If the discloser gives written consent.

6.1 Protections for persons making disclosures

The following types of disclosures are protected:

- Any disclosure assessed by Council as a public interest disclosure.
- Any notification that IBAC receives and determines to be a public interest complaint.

The discloser will be protected against:

- Cannot be fired, disciplined or bullied for making a disclosure.
- Is not subject to any civil or criminal liability for making a disclosure.

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- Is not committing an offence against any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information.
- Is not breaching any other obligation made by oath, rule or law or practice requiring him or her to maintain confidentiality or otherwise restrict confidentiality.
- Cannot be held liable for defamation in relating to information included in a public interest disclosure.

An employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

Several the protections in the Act do not apply if a discloser:

- Knowingly provides false or misleading information
- Claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The Act also states that a person is still liable for their own conduct even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

6.2 Protections for public officers

When a public officer acts in good faith and in accordance with the PID scheme, they do not commit an offence under the Constitution Act 1975 or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

6.3 Information management / recordkeeping

Council staff will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Chief Executive Officer, Public Interest Disclosure Coordinator or Welfare Manager (in relation to welfare matters).

All printed material will be kept in files clearly marked as a Public Interest Disclosures Act matter and warn of the civil and criminal penalties that apply to any unauthorised disclosure of information concerning a public interest disclosure.

All electronic files will be produced and stored on a secure – Executive Access Only security level – electronic records management system with password protection. All materials relevant to an investigation will also be stored securely with the files.

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No documents relevant to a disclosure matter will be emailed to any computer where general staff have access and will ensure all phone calls and meetings are conducted in private.

6.4 Collating and publishing statistics

Council is required to publish statistics about the operation of the Act in its annual report. That information relates mainly to how these procedures may be accessed, and the number of disclosures notified to the IBAC for assessment under the Act during the financial year.

The Public Interest Disclosures Coordinator will establish a secure register to record such information and generally keep account of the status of disclosures made under the Act.

6.5 Freedom of Information

Documents may not be subject to the Freedom of Information Act 1982 if they disclose information that:

- Relates to a public interest disclosure,
- Is likely to identify a person who has made a public interest disclosure.

Council's FOI Officer will consider contacting IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure, if requested under the FOI Act.

7 PROTECTION AND WELFARE OF THE DISCLOSER

The Public Interest Disclosures Coordinator has primary responsibility for ensuring the discloser is protected from direct and indirect detrimental action and that the culture of the workplace is supportive of public interest disclosures being made.

A Welfare Manager will be appointed to all disclosures who have made a public interest disclosure.

8 ROLES AND RESPONSIBILITIES

Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of the Pyrenees Shire Council have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

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Public Interest Disclosure Coordinator Is the key contact point within the Pyrenees Shire Council and will:

- Establish a confidential filing system.
- Receive all disclosures.
- Receive phone calls, emails and letters from members of the public or Council staff seeking to make a disclosure.
- Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action.
- Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace.
- Receive any disclosure made orally or in writing from internal and external persons.
- Commit to writing any disclosures made orally.
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with the Act (i.e. a public interest disclosure).
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential.
- Impartially assess each disclosure to determine whether it is a public interest disclosure.
- Refer all public interest disclosures to IBAC.
- Appoint a Welfare Manager to support the person making the disclosure and to protect him or her from any reprisals.
- Collate and provide statistics on disclosures made.

Receipt of disclosures by staff

Council staff receiving phone calls must not enquire into the circumstances of the disclosure and must refer the caller to the Public Interest Disclosures Coordinator.

If the disclosure is received in the mail or in some other written form, the letter, email or document must be immediately and personally delivered to the Public Interest Disclosures Coordinator without recording any details of the disclosure in any document management system.

The contents of disclosure telephone calls or mail are confidential and a person divulging any matter relating to a disclosure will be subject to prosecution for offences and any penalties under the Act.

Welfare Manager

The welfare manager is responsible for looking after the general welfare of the discloser. The welfare manager will:

- Examine the immediate welfare and protection needs of the discloser and seek to foster a supportive work environment.

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- Advise the discloser of the legislative and administrative protections available to him or her.
 - Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure.
 - Ensure the expectations of the discloser are realistic.
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9 OFFENCES

Taking disciplinary or other action against a person who has made a disclosure creates the perception that it is being taken in reprisal for the disclosure.

Where disciplinary or other action is being contemplated, the Chief Executive Officer or other responsible officer must be able to clearly demonstrate that:

- The fact that a person has made a public interest disclosure is not any part of the reason for acting against the employee.
- There are good and sufficient grounds that would fully justify action against any other person in the same circumstances.
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Council may take legal advice before taking any action against the person making a public interest disclosure.

Care will be taken to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure should be clearly advised of the proposed action to be taken and of any mitigating factors that have been considered.

See [Appendix C](#) of this procedure for the civil and criminal penalties under the Act.

10 DEFINITIONS

Public Interest Disclosures	A complaint given public interest disclosure status by IAB using criteria set out in the PID Act A complaint or report about improper conduct or corruption in the Victorian public sector (whistleblowers)
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Public Interest Complaint	A disclosure that has been determined by IBAC to be a public interest complaint.
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Corrupt conduct

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Improper Conduct includes Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes:

- A criminal offence
- Serious professional misconduct
- An intentional or reckless breach of public trust
- An intentional or reckless misuse of information or material acquired during the performance of the functions of the public officer or public body
- A substantial mismanagement of public resources
- A substantial risk to health or safety of one or more persons
- A substantial risk to the environment

Conduct of any person that:

- Adversely affects the honest performance of a public officer or public body of their public functions
- Is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining:
 - A licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
 - An appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
 - A financial benefit or real or personal property
 - Any other direct or indirect monetary or proprietary gain

That the person or associate would not have otherwise attained.

Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Serious Professional Misconduct Serious professional misconduct is where there is a serious failure to exhibit the skills and experience requires to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace.

Detrimental Action It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

- Action causing injury, loss or damage
- Intimidation or harassment

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- Discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of legal or disciplinary action

A person doesn’t need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

The PID Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

Specified Conduct

Conduct of any person or officer that:

- Adversely affects the honest performance by a public officer or public body of his / her / its functions as a public officer or body
- Constitutes or involves the dishonest performance of their functions as a public officer or body
- Constitutes or involves knowingly or recklessly breaching public trust
- Involves the misuse of information or material acquired during the performance of their functions as a public officer or body, whether or not for the benefit of that officer, body or any other person
- Could constitute a conspiracy or an attempt to engage in any conduct that involves substantial
 - Mismanagement of public resources
 - Risk to public health or safety
 - Risk to the environment

Public bodies

Include:

- A council established under the Local Government Act
- Public sector bodies (including public entities and special bodies)
- Incorporated or unincorporated bodies established under an Act for a public purpose, including universities
- Electoral Boundaries Commission
- A body performing a public function on behalf of the State or a public body or public officer (e.g. a regulatory function or a function that publicly funded)

Public officers

Include:

- Local government Councillors and council employees
- Public servants, including IBAC officers
- University employees and teachers

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- Victoria Police personnel
 - Members of Parliament, including Ministers, ministerial officers, parliamentary advisors and officers, electorate officers, judicial officers including coroners and associated judges.
 - Statutory office holders, including the Auditor-General and the Victorian Ombudsman.
 - The Governor, Lieutenant-Governor or Administrator of the State
-

11 REFERENCE & RELATED DOCUMENTS

- *Public Interest Disclosure Act 2012*
- *Independent Broad-based Anti-corruption Act*

11.1 Consultation and impact

Pyrenees Shire Council is committed to consultation and cooperation between management and its employees. Development of this procedure was conducted in consultation with relevant staff prior to approval. It is considered that this procedure does not impact negatively on the rights identified in the Charter of Human Rights and Responsibilities (2007).

12 VERSION HISTORY

Version Number	Issue date	Description of change
1.0		Initial release
2.0	Nov 2019	Review
3.0	Oct 2020	Update in accordance with legislative update

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13 APPENDIX A – ORGANISATIONS AUTHORISED TO RECEIVE PUBLIC INTEREST DISCLOSURES

<ul style="list-style-type: none"> • the Chief Commissioner of Police • the Director of Public Prosecutions • the Chief Crown Prosecutor • the Solicitor-General • the Governor • the Lieutenant- Governor or Administrator • the Director, Policy Integrity • the Electoral Commissioner • a Commissioner or member of a Board of Inquiry appointed under the <i>Inquiries Act 2014</i> • a judicial employee • a Ministerial officer • a Parliamentary adviser • an electorate office • a Parliamentary officer • a Minister of the Crown who is not a member of Parliament. 	→	IBAC
<ul style="list-style-type: none"> • a Councillor • the Information Commissioner • the Health Complaints Commissioner. 	→	IBAC or the Victorian Ombudsman
<ul style="list-style-type: none"> • the Chief Examiner or an Examiner appointed under the <i>Major Crimes (Investigative Powers) Act 2004</i> • a Victorian Ombudsman officer • a Victorian Auditor-General's officer • a Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission). 	→	IBAC or the Victorian Inspectorate
<ul style="list-style-type: none"> • a member of police personnel (other than the Chief Commissioner). 	→	IBAC or a Prescribed Member of Police Personnel
<ul style="list-style-type: none"> • a member of Parliament (Legislative Council). 	→	President of the Legislative Council
<ul style="list-style-type: none"> • a member of Parliament (Legislative Assembly). 	→	Speaker of the Legislative Assembly
<ul style="list-style-type: none"> • a Public Interest Monitor • an IBAC officer. 	→	The Victorian Inspectorate
<ul style="list-style-type: none"> • a Judicial officer or a member of VCAT who is not a judicial officer. 	→	IBAC or the Judicial Commission
<ul style="list-style-type: none"> • a Victorian Inspectorate Officer. 	→	Integrity and Oversight Committee, the Speaker of the Legislative Assembly of the President of the Legislative Council

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If the subject of the disclosure is not listed in the previous diagram, the disclosure can be made to the following organisations that are authorised to receive public interest disclosures:

Organisation	Officer who can receive disclosures
<p>Council</p> <p>All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees.</p> <p>Disclosures about councils can also be made to IBAC or to the Victorian Ombudsman or the Victorian Inspectorate.</p>	<ul style="list-style-type: none"> • Chief Executive Officer • A person identified in the council's procedures as a person who can receive a disclosure about that council – e.g. Public Interest Disclosure Coordinator • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure
<p>IBAC</p>	<ul style="list-style-type: none"> • The Commissioner • A Deputy Commissioner • The Chief Executive Officer • An IBAC employee • An IBAC Consultant
<p>Victorian Ombudsman</p>	<ul style="list-style-type: none"> • A Victorian Ombudsman Officer
<p>Victorian Inspectorate</p>	<ul style="list-style-type: none"> • The Victorian Inspector • A Victorian Inspectorate employee
<p>Public Service body</p> <p>Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees.</p> <p>Disclosures about public sector bodies can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.</p>	<ul style="list-style-type: none"> • Head of the relevant public service body • A person identified in the body's procedures as a person who can receive a disclosure about that body. • Manager or supervisor of the disclosure • Manager or supervisor of the person who is the subject of the disclosure

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14 APPENDIX B – IBAC PROCESSES

Following IBAC’s assessment and determination, they will provide information as follows:

a) If IBAC determines it is a public interest complaint:

- IBAC will advise the discloser of the determination and the action it will take. This includes advising the discloser whether IBAC has decided to investigate, refer the complaint, or take no further action.
- If IBAC decides to take no further action it must give reasons for its decision.
- If IBAC decides to investigate or refer the complaint, it must provide a written statement advising the discloser that it is an offence to disclose IBAC’s action.
- IBAC must notify the discloser in writing and within a reasonable time. However, IBAC may decide not to notify the discloser or the notifying entity if it considers that this notification would have one of the adverse consequences set out in the IBAC Act. These consequences include putting a person’s safety at risk or prejudicing an investigation.

b) If IBAC determines it is not a public interest complaint:

- IBAC must advise the discloser in writing within a reasonable time that:
 - IBAC has determined their disclosure is not a public interest complaint,
 - The disclosure will not be investigated as a public interest complaint, and
 - Their identity does not have to be kept confidential.
- IBAC will advise the notifying entity of its decision.
- IBAC may consider treating the disclosure as a complaint under the IBAC Act which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about. IBAC will consult with the discloser before doing so.

If IBAC dismisses a public interest complaint, it must do so for the reasons set out in the Act, for example if the complaint lacks substance or credibility, is vexatious or trivial, or is about a matter that neither IBAC or a body specified in the IBAC Act may investigate.

14.1 IBAC Investigations

IBAC may choose to investigate the alleged conduct if it is corrupt conduct that is serious or systemic. IBAC may refer a public interest complaint to another investigating entity – e.g. the Victorian Ombudsman, Local Government Inspectorate or back to Council.

During an investigation, IBAC or another investigating body may need to contact Council if it is the subject of the complaint. If so, Council and its officers can disclose information about the public interest complaint without breaching confidentiality requirements of the Act.

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IBAC or the investigating body may disclose the identity of the disclosure and the content of the complaint if necessary. If so, Council and its officers to whom the information has been disclosed are bound by the confidentiality requirements of the Act.

Also, if Council or its officers are advised of the discloser's identity, they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

At the end of an investigation, IBAC must provide the discloser with information on the results. This will include any action taken by IBAC and any recommendation by IBAC that action or further action be taken.

IBAC may provide written information to Council's Chief Executive Officer about the commencement, conduct or result of an investigation. This includes any actions taken and any recommendations for action or further action. However, IBAC must not provide any information that is likely to lead to a discloser being identified.

IBAC does not have to provide information to either the discloser or the Chief Executive Officer if it considers the disclosure might result in possible adverse outcomes specified in section 163(4) of the Act.

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15 APPENDIX C – CIVIL AND CRIMINAL PENALTIES UNDER THE PUBLIC INTERESTS DISCLOSURE ACT 2012

Offences	Penalties
<p>Detrimental action: Liability of an individual:</p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • Another person has made or intends to make a public interest disclosure • The person believes another person has made or intends to make a public interest disclosure • Another person has cooperated or intends to cooperate with the investigation of a public interest disclosure • The person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure 	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of Court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Detrimental action: Vicarious liability of their employer:</p> <p>An employer may also be held to be liable for the detrimental action of their employee or agent.</p>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of Court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Disclosure of content of a public interest disclosure:</p> <p>A person / body must not disclose content of a disclosure or information about its content.</p>	<p>120 penalty units or 12 months imprisonment or both (person)</p> <p>600 penalty units (body corporate)</p>
<p>Disclosure of identity of person making a public interest disclosure:</p> <p>A person / body must not disclose information likely to lead to the</p>	<p>120 penalty units or 12 months imprisonment or both (person)</p> <p>600 penalty units (body corporate)</p>

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Offences	Penalties
identification of a person who has made a disclosure.	
<p>Making false disclosures or providing false further information:</p> <p>A person must not provide information intending it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading.</p>	120 penalty units or 12 months imprisonment or both.
<p>Falsely claiming a disclosure is a public interest disclosure:</p> <p>A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure.</p>	120 penalty units or 12 months imprisonment or both.

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